

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
People of Progress, Inc.)	
)	
Application for a New LPFM Station at)	File No. BNPL-20131114BXJ
Redding, California)	Facility ID No. 195889

MEMORANDUM OPINION AND ORDER

Adopted: December 10, 2014

Released: December 10, 2014

By the Commission:

1. The Commission has before it an Application for Review (“AFR”) filed by People of Progress, Inc. (“POP”), on August 5, 2014. In the AFR, POP seeks review of the Media Bureau (“Bureau”) reconsideration decision that affirmed the dismissal of POP’s application submitted during the October 2013 Low Power FM (“LPFM”) filing window for a new station at Redding, California (“Application”).¹ The staff dismissed the Application – without providing POP the opportunity to amend – because it failed to meet the minimum spacing requirements of Section 73.807(a) of the Commission’s Rules (“Rules”) with regard to two second adjacent channel stations² and POP did not request a waiver of this Rule with the Application.³ On review, POP again requests that the Commission reinstate the Application and allow it to file an amendment with second-adjacent channel waiver requests.

¹ *People of Progress, Inc.*, Letter, Ref-1800 (MB July 16, 2014) (“*Reconsideration Decision*”); *People of Progress, Inc.*, Letter, Ref. 1800 (MB Dec. 16, 2013) (“*Dismissal Letter*”). See also *Broadcast Actions*, Public Notice, Report No. 48139 (MB Dec. 19, 2013).

² 47 C.F.R. § 73.807(a)(1) specifies a minimum spacing of 93 kilometers between the proposed LPFM station and any Class C FM station operating on a second-adjacent channel. As discussed in the *Dismissal Letter*, the Station’s proposed site is 18 kilometers from the licensed facility of second-adjacent channel Station KNCQ(FM), Redding, California and 11.5 kilometers from the licensed facility of second-adjacent channel Station KVIP-FM, Redding, California, findings that POP does not dispute. Pursuant to 47 C.F.R. § 73.870(c), any application submitted during an LPFM filing window that fails to meet the spacing requirements of Section 73.807 will be dismissed “without any opportunity to amend.”

³ Section 3(b)(2)(A) of Local Community Radio Act of 2010 (“LCRA”) granted the Commission the authority to waive Section 73.807 to allow second-adjacent channel short-spacings that are predicted not to result in interference to any authorized radio service. See Pub. L. No. 111-371, 124 Stat. 4072 (2011). See also *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15425-26 (2012) (implementing Section 3(b)(2)(A) of the LCRA). As discussed in the *Reconsideration Decision*, LPFM applicants were advised that a failure to file a second-adjacent channel waiver request would result in dismissal of the application without an opportunity to amend. See *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15 – October 29, 2013 Low Power Filing Window*, Public Notice, 28 FCC Rcd 8854, 8855 (MB 2013) (“*LPFM Public Notice*”) (“Consistent with established processing rules, an LPFM application that fails to protect [existing] authorizations, applications, and allotments will be dismissed with no opportunity to correct the deficiency.”); *id.* at 8856 (“**Following the close of the window, the Commission staff will return and/or dismiss applications and amendments not submitted in accordance with the procedures described in this Public Notice. No curative amendments for such applications and amendments will be accepted after the close of the window.** An applicant should consider using a consulting engineer or a party familiar with the

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2. POP suggests that the “equal in status” language of Section 5 of the LCRA⁴ supersedes Section 73.870(c), because the dismissal of the Application will result in no LPFM stations being licensed to Redding, which currently has twelve FM translator stations in the area.⁵ POP also argues that prohibiting LPFM applicants to correct Section 73.807 defects, but allowing applicants in other broadcast services to file similar curative amendments, “does not comport with the directive” in Section 307(b) of the Communications Act of 1934, as amended, that the Commission make a fair, efficient and equitable distribution of licenses by treating LPFM and other services of stations differently.⁶

3. We reject POP’s argument that the LCRA supersedes Section 73.870(c).⁷ We have recently affirmed that the LCRA and subsequent orders in the LPFM proceeding did not address or otherwise modify Section 73.870(c).⁸ Moreover, we note that Section 73.870(c) specifies a processing policy, not a substantive policy, and it accordingly does not affect the status of LPFM stations relative to FM translator stations.⁹ Likewise, recently, the Commission rejected the argument that Section 307(b) mandates uniform processing rules for all radio services.¹⁰ The fact that no LPFM station will be licensed to Redding does not warrant reinstating POP’s defective application, which was properly dismissed without affording the applicant the ability to amend.

4. Finally, we reject POP’s argument that staff has allowed applicants to file corrective amendments to applications which contained technical errors, and should do so here.¹¹ Those case situations are distinguishable from the facts here and are thus inapposite.¹² Moreover, staff actions are not binding on the Commission.¹³

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LPFM technical rules to determine the technical acceptability of its application, particularly if the applicant is requesting a second-adjacent channel spacing waiver.”) (emphasis in original).

⁴ See LCRA § 5(3) (“The [FCC], when licensing new FM translation stations, FM booster stations, and low-power FM stations, shall ensure that . . . FM translator Stations, FM booster stations, and low-power FM stations remain equal in status . . .”).

⁵ AFR at 2-3.

⁶ *Id.* at 5-6, citing 47 U.S.C. § 307(b).

⁷ POP also argues, as it did in the Petition, that LCRA does not specify when a second-adjacent channel waiver must be filed. We reject this argument for the reason stated in the *Reconsideration Decision*. See *Reconsideration Decision* at 2 (LPFM Public Notice warned applicants that failure to comply with certain requirements at time of filing would result in dismissal without opportunity to amend).

⁸ See *Clifford Brown Jazz Foundation*, Memorandum Opinion and Order, FCC 14-162 (rel. Oct. 15, 2014) (“*Clifford Brown*”) (affirming dismissal of new LPFM application where applicant failed to submit second-adjacent channel waiver request with the original application and finding that LCRA did not supersede Section 73.870(c)).

⁹ Section 73.870(c) does not preclude second-adjacent waiver requests by LPFM applicants, but instead requires that such requests be submitted in the filing window rather than subsequently through an amendment. The purpose of this processing policy is to increase speed and efficiency in processing LPFM applications, thereby promoting introduction of new service by successful applicants and conserving the limited resources of the agency. See *Clifford Brown* at 2.

¹⁰ *Id.*

¹¹ AFR at 4, citing *Pike Place Market Preservation and Developmental Authority* (File No. BNPL-20131114AUD), *Chiloquin Vision in Progress* (File No. BNPL-20131112ABV), and *Radio 23* (File No. BNPL-20131114AVO).

¹² The deficiency in each of the cases cited by POP in its AFR was the specification of erroneous site coordinates. However, the applicants were each able to demonstrate that the coordinates were typographical errors. In *Pike Place*, the original application contained an Engineering Study and Second Channel Waiver Request that identified a site compliant with Section 73.807(a)(1). In *Chiloquin* – which did not involve a Section 73.807 violation – the applicant corrected a typographical error which would have placed its transmitter in a location outside the United States before the application was dismissed by the Bureau. In *Radio 23*, the applicant also identified a transmitter

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5. ACCORDINGLY, IT IS ORDERED that the Application for Review filed on August 5 2014, by People of Progress, Inc., IS DENIED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(g) of the Commission's Rules.¹⁴

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Marlene H. Dortch
Secretary

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site outside the United States, but had provided a valid Antenna Site Registration Number that referenced the correct site coordinates. Allowing a corrective amendment without such intrinsic evidence would defeat the purpose of Sections 73.807 and 73.870 of the Rules. Here, POP omitted the required waiver request from its application.

¹³ See *Comcast Corp. v. FCC*, 526 F.3d 763, 769-70 (D.C. Cir. 2008) (“[A]n agency is not bound by the actions of its staff if the agency has not endorsed those actions.”).

¹⁴ 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(g).